

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

4 UNITED STATES OF AMERICA . CR. NO. H-06-421-2  
5 VS. . HOUSTON, TEXAS  
6 .  
7 . OCTOBER 22, 2010  
8 ADNAN BABAR MIRZA . 10:16 A.M. to 11:23 A.M.

9  
10 TRANSCRIPT of SENTENCING  
11 BEFORE THE HONORABLE EWING WERLEIN, JR.  
12 UNITED STATES DISTRICT JUDGE  
13

14 APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript  
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1 P R O C E E D I N G S

2 *THE COURT:* Please be seated.

3 The Court calls for sentencing No. 06-421, United  
4 States versus Adnan Babar Mirza.

5 *MR. COOK:* For the United States, Your Honor, Glenn  
6 Cook and Jim McAlister.

7 *THE COURT:* Thank you. And for defendant?

8 *MR. ADLER:* I'm sorry. Good morning, Your Honor.  
9 David Adler for Mr. Mirza, who's present in the courtroom.

10 *THE COURT:* Good morning, sir.

11 It's correct, is it not, that the defendant was  
12 adjudged guilty of Counts 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the  
13 second -- let's see, was this the -- of the superseding  
14 indictment by verdict of the jury?

15 *MR. ADLER:* Yes, it is, Your Honor.

16 *THE COURT:* And have you received and read and had  
17 opportunity for your client to receive and read and discuss  
18 with you the presentence investigation report from the  
19 probation officer?

20 *MR. ADLER:* We have, Your Honor.

21 *THE COURT:* All right. I have received in connection  
22 with this sentencing the presentence investigation report from  
23 the probation office, received and read all of the following,  
24 that and the statement of the government at Document 267 that  
25 it has no objections; the government's response to the

1 defendant's objections at Document No. 269; the government's  
2 objections to the defendant's character letters at Document  
3 No. 274; the defendant's objections to the PSR at Document  
4 No. 268; the defendant's character letters at Document 273; an  
5 additional character letter received this morning, filed  
6 August 24, written in support of Mr. Mirza; the addendum to the  
7 presentence report from the probation office dated October 13,  
8 2010.

9 Are these all of the matters that have been filed  
10 in connection with this sentencing?

11 *MR. ADLER:* I believe so, Your Honor.

12 *MR. COOK:* For the government, yes, Your Honor.

13 *THE COURT:* All right. Thank you. I will rule on the  
14 objections then.

15 The government has no objections.

16 The defendant's first objection is to page 1,  
17 correcting the date of sentencing to this date, and that's  
18 accepted and sustained.

19 Second, the defendant at Paragraph 12 clarifies  
20 that he does not believe that all who are born into Black  
21 Panther families are Muslims. That's accepted as clarifying  
22 information.

23 Paragraph 14, objecting that the defendant did  
24 not become an undocumented alien when his student visa expired.  
25 That is correct information. That should be reformed to show

1 that the defendant -- the visa is, as the defendant has pointed  
2 out, a document required to present for admittance to the  
3 United States. However, in this instance the defendant had an  
4 F-1 student visa and when he accepted employment and took  
5 employment, as the evidence showed and as the Court finds, away  
6 from the campus, he was out of -- violated the terms and  
7 conditions of the visa and, therefore, he became an alien  
8 illegally or unlawfully in the United States. His status,  
9 therefore, changed. With that correction, the objection is  
10 otherwise denied -- in part granted to that extent, otherwise,  
11 denied.

12           There's an additional objection to Paragraph 14,  
13 believing that his codefendant, Williams, did not make the  
14 announcement described in that paragraph. That is accepted as  
15 clarification of the defendant's recollection.

16           The fourth objection as to Paragraph 16, to the  
17 effect that the defendant did not recall making the statements  
18 described at the end of Paragraph 16, that's accepted as a  
19 statement of his failure to recall that.

20           The next objections to Paragraphs 17 and 18,  
21 objecting that these -- the material here is irrelevant. Both  
22 of those objections are denied.

23           The next objection -- objections at Paragraph  
24 7 -- Nos. 7 and 8 are to Paragraphs 19 and 20, arguing that  
25 these paragraphs do not accurately convey the context of the

1 conversations. There are quite a number of those. I'll come  
2 to others. The PSR, of course, is a summary of the  
3 information. The Court heard the evidence at trial and finds  
4 that the conversations are adequately set forth in the context.  
5 There could always be a larger context, I suppose, but these  
6 objections are denied.

7 Paragraph -- the next objection is to Paragraph  
8 21. It's the same as the previous objection, with the same  
9 ruling for the same reason. But additionally, there's an  
10 objection that the defendant believes he did not indicate that  
11 the -- that he believes his word was that the court -- that the  
12 reporter or journalist would be an excellent guide, not guise,  
13 as had been suggested by his codefendant. And that's accepted  
14 as the defendant's recollection of the word he used, although  
15 the transcript would be the best evidence of that.

16 The next objections 10 -- Nos. 10 through 21 are  
17 to Paragraphs 22 through 27, 29 through 32, 37 and 39, all of  
18 which are statements that the defendant's belief that the  
19 context of the conversations are not accurately conveyed. That  
20 is -- those are denied for the reasons previously stated. The  
21 Court finds that there's adequate context provided.

22 The next objection, No. 22, is to Paragraph 40,  
23 objecting that the defendant was not out of status due to his  
24 visa having expired. That is sustained and clarified as  
25 follows: As I had previously stated, the defendant was out of

1 status because he had violated the terms of his F-1 student  
2 visa by taking gainful employment off campus, away from campus,  
3 in violation of the terms upon which he was admitted to the  
4 United States.

5           The next objections, 23, 24 and 25, are to  
6 Paragraphs 41, 42, and 43, object -- which are relevancy  
7 objections. Those are all denied.

8           The next objections, 26 through 29, are to  
9 Paragraphs 44, 45, 47, and 48, respectively objecting, once  
10 again, to conversations -- the information not accurately  
11 conveying the context of the conversations reported. For the  
12 reasons previously stated, those objections are denied.

13           Paragraph 30 -- rather, Objection 30 as to  
14 Paragraph 52, objecting that the assistance was for -- the  
15 financial assistance that had been collected and delivered was  
16 for families of the Taliban, not Taliban members. Statements  
17 to that effect -- or some statement -- some evidence was to the  
18 effect that it was for families, but there was no distinction  
19 drawn in the evidence between Taliban and family members of  
20 Taliban certainly. And, further, the Court finds that the  
21 assistance to any portion of the Taliban or their families of  
22 assistance to the Taliban certainly is supported by the  
23 evidence. And that objection is clarified -- or the response  
24 there for clarification, and the objection is otherwise denied.

25           Now, all of the objections heretofore that have

1 been made and ruled upon have no bearing on the guideline.

2 Paragraph -- the objection, No. 31, as to  
3 Paragraph 6, objecting to a 12-level increase under Section  
4 3A1.4, which also has bearing upon the criminal history  
5 category, from I to a criminal history category VI, the  
6 defendant objects that there was no evidence that the  
7 defendant's offenses involved or were intended to promote any  
8 terrorism offenses in Section 32 -- 2332b(g) (5) and that the  
9 indictment does not contain any reference to a listed terrorism  
10 offense.

11 Do either counsel wish to speak any further on  
12 that particular matter? I have the briefs of the submission of  
13 the defendant and the brief of the government as well.

14 *MR. ADLER:* I have nothing other than what I put in  
15 the objection, Your Honor.

16 *MR. COOK:* And I believe our brief adequately  
17 addresses the issue, Your Honor.

18 *THE COURT:* The Section 3A1.4 terrorism section of the  
19 guidelines provides that if the offense is a felony that  
20 involved or was intended to promote a federal crime of  
21 terrorism, increase by 12 levels. And that in such a case, the  
22 defendant's criminal history category would be set at category  
23 VI.

24 The Court has given careful consideration to  
25 this. It is an accurate statement that the defendant has made,

1 that there's not a direct reference in the indictment to  
2 Section 2332b(g) (5) where the term "federal crime of terrorism"  
3 is described, but the Section 3A1.4 of the guidelines speaks to  
4 a felony that involved and then it has in the disjunctive "or  
5 was intended to promote a federal crime of terrorism." There  
6 are -- I have not found or it is not cited a case from the  
7 Fifth Circuit dealing with this, but several Circuits have  
8 dealt with it. And the Court finds probably the clearest  
9 statement and most helpful statement analyzing this section of  
10 the guidelines in *United States versus Awan* at 607 F.3d 306,  
11 Second Circuit case decided earlier this year, on June 10th.

12           The court pointed out that this disjunctive use  
13 of the language in Section 3A1.4 requires an analysis first of  
14 the word "involved," which is a federal crime of terrorism and  
15 this offense includes such a crime, that is, the defendant  
16 committed, attempted, or conspired to commit a federal crime of  
17 terrorism as defined in Section 2332b(g) (5) or his relevant  
18 conduct includes such a crime.

19           The other in the disjunctive, as I say, the other  
20 part of this section deals with that which is intended to  
21 promote such a crime. And the Second Circuit has written at  
22 page 314, that the intended to promote prong applies where the  
23 defendant's offense is intended to encourage, further, or bring  
24 about a federal crime of terrorism even though the defendant's  
25 own crime of conviction or relevant conduct may not include a



1 federal crime of terrorism. And, further, at the same page,  
2 under the intended to promote prong, "However, so long as the  
3 defendant's offense was intended to encourage, further, or  
4 bring about a federal crime of terrorism as statutorily  
5 defined, the defendant himself does not have to commit an  
6 offense listed in 2332b(g) (5) (B) and the defendant's offense  
7 need not be calculated as described in 2332b(g) (5) (A) ."

8           And then they provide the summary at page 315 as  
9 follows: That we confirm what we noted in *Stewart* and join the  
10 other Circuits that have held that a defendant who intends to  
11 promote a federal crime of terrorism has not necessarily  
12 completed, attempted, or conspired to commit the crime; instead  
13 the phrase implies that the defendant has as one purpose of his  
14 substantive count of conviction or his relevant conduct the  
15 intent to promote a federal crime of terrorism. It follows  
16 that Section 3A1.4 may apply without a showing that the  
17 defendant's conduct constitutes an offense listed in 18 U.S.C.  
18 Section 2332b(g) (5) (B) or satisfies the calculation requirement  
19 set forth in Section 2332b(g) (5) (A) .

20           Now, that answers the question of the objection  
21 made by the defendant that there was not an allegation of an  
22 offense specifically under Section 2332b(g) (5) . The question  
23 then is whether the offense of conviction in the substantive  
24 count and the relevant conduct associated with that conduct was  
25 intended or had as one of its purposes the intent to promote a

1 federal crime of terrorism.

2           And the government has set forth quite a number  
3 of portions of 2332b(g) (5) which they feel, argue may be  
4 applicable. And, indeed, cases could be made and can be made  
5 with respect to a number of these subparts of the statute. For  
6 example, number -- well, first, let me mention under (5) (A),  
7 the offense, it's calculated to influence or affect the conduct  
8 of government by intimidation or coercion or to retaliate  
9 against government conduct. This group known as the Taliban or  
10 the Mujahideen clearly are involved in such conduct and is a  
11 violation of section -- and various sections are  
12 possibilities -- Section 956(a) (1) relating to conspiracy to  
13 murder, kidnap, or maim persons abroad; Section 1114, relating  
14 to killing or attempted killing of officers and employees of  
15 the United States; Section 2332, relating to certain homicides  
16 and other violence against United States nationals occurring  
17 outside the United States; Section 2332b, relating to acts of  
18 terrorism transcending national boundaries; Section 2339(B),  
19 relating to providing material support to terrorist  
20 organizations; and perhaps the government has argued others as  
21 well.

22           The Court finds from a preponderance of the  
23 evidence that at least a Section 2332 relating to certain  
24 homicides and other violence against the United States  
25 nationals occurring outside of the United States is conduct in

1 which the Taliban is engaged. And certainly the Taliban itself  
2 is removed from any kind of official status, which has also  
3 been recognized in *United States versus Lindh*, 212 F.Supp.2d  
4 541, cited in the Eastern District of Virginia.

5           The defendant and others were engaged in the  
6 violations of these substantive firearm violations in  
7 connection with participating in paramilitary operations near  
8 Willis, Texas, intended to improve marksmanship, survival  
9 skills in preparation for battlefield jihad overseas. They  
10 have a declared goal of traveling to Pakistan and Afghanistan  
11 to fight alongside the Mujahideen against the United States  
12 military and coalition forces in the Middle East and in that  
13 region.

14           They discussed various ways in which they might  
15 successfully enter that area in Pakistan -- through Pakistan in  
16 order to join up with the forces and Taliban fighters. They  
17 collected financial and material support which they then  
18 undertook to deliver to support the Taliban or Taliban  
19 families.

20           All of this conduct on the offense of  
21 conviction -- offenses of conviction were intended to promote  
22 in accordance with the analysis that I've given federal crimes  
23 of violence. And, accordingly, the objection to application of  
24 Section 3A1.4 is denied. I find that it is properly applied in  
25 the presentence investigation report.

1           The next objection is No. 61 -- I beg your  
2     pardon, No. 32 to Paragraph 61, objecting that the defendant  
3     should have a role adjustment as a minor participant.

4           That is denied. The defendant had a full --  
5     certainly what would be regarded as an average role at least in  
6     this operation.

7           The next two objections I believe, Mr. Adler, 33  
8     and 34, are computation objections based upon the previous  
9     objections that you made. And I'll deny those for the reasons  
10    previously stated.

11          Objection 35 is to Paragraph 75, providing  
12    corrected information regarding when Mirza and his family  
13    returned to Kuwait and they lived there until 2000, and giving  
14    the correct age of his sister, her family or so. That's all  
15    accepted as clarifying information.

16          What is that bell? Whoever has that bell needs  
17    to remove -- take that, marshal, and take that outside the  
18    courtroom.

19          Number 36 states that the defendant is South  
20    Asian, not Middle Eastern. That's accepted as clarifying  
21    information.

22          The next two objections, 37 and 38, correct the  
23    spelling of Cypress College in Paragraph 82 and the correct the  
24    spelling of Mr. Badat's name in Paragraph 84. Those are  
25    accepted.

1 Paragraph -- objection 39 at Paragraph 86,  
2 objects -- or states that the defendant believes that the  
3 \$9,311 in debt collection status may include \$5,000 separately  
4 mentioned in the next following sentence. And that's accepted  
5 as additional information.

6 Objection 40 to Paragraph 90 is a computation  
7 objection. Again, it's denied for reasons previously stated.

8 No. 41 addresses Paragraphs 106 and 107. This is  
9 argument for downward departure or a sentence variance based  
10 upon alleged government manipulation. I'll permit that to be  
11 advanced -- to be advanced in argument during the allocution.

12 Have I ruled on all of the objections?

13 *MR. ADLER:* You have, Your Honor.

14 *THE COURT:* Then based upon the presentence  
15 investigation report and the addendum thereto, which I adopt  
16 with the changes or clarifications and corrections made on the  
17 record, I find that the total offense level is 38, criminal  
18 history category is VI. Recommended period of imprisonment  
19 under the Sentencing Guidelines is for 360 months to life.  
20 Fine range recommended, 25,000 to \$250,000.

21 Very well, Mr. Adler, do you wish to make a  
22 statement for the defendant?

23 *MR. ADLER:* Yes, Your Honor. Mr. Mirza stands before  
24 the Court facing an enormous sentence, essentially the second  
25 highest sentence you can receive under the Sentencing

1 Guidelines, 30 years to life. I hope the Court will consider  
2 strongly the language in 3553 that says the sentence should be  
3 no greater than necessary than to meet the objectives of the  
4 sentencing statute.

5           The facts of this case, Judge, are that there was  
6 no target, there was no specific plan. No steps were taken, of  
7 course, in furtherance of a specific target or executing a  
8 specific plan. Mr. Mirza and his associates were out in the  
9 woods in Willis, shooting guns on the weekend and talking  
10 tough. That's what the evidence at trial showed.

11           Mr. Mirza clearly is frustrated with the way the  
12 political situation is in Pakistan and Afghanistan and the  
13 United States, but there was no specific plan to do any damage  
14 to any particular individual nor any particular building.

15           I point out, Judge, that just last week up in  
16 Dallas, an individual involved in an FBI operation was provided  
17 a truck that he believed contained a bomb. And he drove that  
18 to a building in Dallas with the intent of destroying that  
19 building and killing and maiming as many people as possible.  
20 That individual received a 24-year sentence. Mr. Mirza under  
21 the guideline calculations is looking at a 30-year sentence,  
22 with no explosives, no belief he had explosives, no truck, no  
23 target, no particular intended victim.

24           I don't dispute the evidence at trial, Judge,  
25 that Mr. Mirza was recorded talking about what -- depending on

1 how you interrupt the conversations, what he would like to see  
2 happen or what they might do. But I point out, Judge, that  
3 Mr. Mirza stayed here in Texas. He stayed in the Southern  
4 District. He did not go back to these areas of Pakistan or  
5 Afghanistan despite all the tough talking around the campfire.  
6 And, in fact, Mr. Mirza -- it wasn't even Mr. Mirza's idea to  
7 go out into the woods and shoot these guns.

8           My point, Judge, is that 30 years in the United  
9 States federal penitentiary should be reserved for the most  
10 serious offenses, not for an individual who stupidly violates  
11 the conditions of his visa, according to the evidence, and  
12 talks tough around the campfire. The fact is, Judge, talking  
13 tough around the campfire is an age old Texas tradition.  
14 Probably very few men who have been around a campfire out in  
15 the woods have said things that they wouldn't later on regret  
16 if it was recorded, played to their wives or their colleagues.

17           The discussions that Mr. Mirza and the other  
18 individuals in the case had are sometimes disturbing, I don't  
19 dispute that, but they certainly don't warrant a 30-year  
20 sentence or more. And, so, I hope the Court will either depart  
21 downward or vary the guideline range to a sentence that more  
22 adequately reflects Mr. Mirza's conduct in this case in light  
23 of these other terrorism cases where people have taken much  
24 more concrete, much more dangerous steps to hurt other  
25 individuals.

1 I know Mr. Mirza wants to address the Court as  
2 well, Your Honor.

3 *THE COURT:* Thank you, sir.

4 Mr. Mirza, do you wish to make a statement on  
5 your own behalf, sir?

6 *THE DEFENDANT:* Yes, sir. I do understand that this  
7 is a sensitive issue, not only for people in this room but  
8 outside as well. I myself personally do not -- have never  
9 intended to harm any individual, let alone anything else. What  
10 we do not know, in my opinion, to this -- right now is that the  
11 people who I was with, my codefendant, Mr. Williams, the  
12 confidential informant and the undercover, my belief has always  
13 been -- I've known Mr. Williams since 2001, and we've been  
14 involved in a lot of activities together, volunteering and  
15 stuff. And I've also known the confidential informant. But  
16 we've always treated Mr. Williams as somebody who is  
17 intellectually disabled. We have never taken anything  
18 seriously about Mr. Williams. But with people who are  
19 intellectually disabled, it's very hard --

20 *THE COURT:* Intellectually what?

21 *THE DEFENDANT:* Disabled.

22 *THE COURT:* Disabled?

23 *THE DEFENDANT:* Yes. Yes. I mean, in my opinion, I  
24 think Mr. Williams, if he ever gets psychiatrically evaluated,  
25 I mean, the evaluation would point out that he either has



1 autism or Asperger's syndrome, which is a type of autism  
2 spectrum disorder.

3           And when -- if you look at the PSI report, which  
4 was compiled by the probation officer, on the Paragraph 13, it  
5 states that when the FBI first approached Mr. Williams at home,  
6 his wife actually slammed the door on the FBI and urged  
7 Mr. Williams not to talk to the FBI without the presence of an  
8 attorney. It's kind of natural, like, when we know somebody  
9 who's very gullible and very misunderstood, we try to protect  
10 that individual. I mean, it doesn't happen in a conventional  
11 way, but we try our best. It's just like dealing with an  
12 individual with, like -- I mean, a kid probably, like, 12 years  
13 old, 13 years old or maybe younger, who doesn't understand the  
14 consequence of his or her actions.

15           I mean, today we do not know this for a fact,  
16 that Mr. Williams has autism or Asperger's, but I believe that  
17 one day if he ever gets evaluated and it does come true, then  
18 whatever I did, which should be seen as something that I did to  
19 the best of my abilities to stop Mr. Williams from acting on  
20 the ideas that were instigated by the confidential informant  
21 and the undercover officer. This is -- I'm convinced deep down  
22 inside that this has been the case.

23           I've never -- I mean, I've only lived, like, four  
24 years of my life in Pakistan and that was during the first Gulf  
25 War. I do not have a whole lot of relatives or -- in Pakistan.

1 My family's pretty much has been either in Kuwait or Dubai.

2 And when they first approached me, the only  
3 rationale that they had was that because I was -- I had a  
4 Pakistani passport, that is why I should know about Pakistan,  
5 but it wasn't true. I mean, any other sane person would know  
6 that. I mean, if a person hasn't lived anywhere, like, in  
7 adulthood, I mean, how is he supposed to know the details or  
8 he's an expert on things.

9 I just tried my level best to make sure that  
10 Mr. Williams doesn't -- doesn't try to leave the country. I  
11 could not stop him from going to camping trips, but I tried to  
12 stay with him so that, I mean, at least if I was there, I could  
13 stop him from doing something that could be harmful. I did  
14 that in the best interest of mankind in general. I mean, when  
15 I look at things, I try to do it for humanity, I mean. And  
16 when I look at people, I don't look at their race, culture,  
17 creed, language, or anything. To me a human being is a human  
18 being. Every soul -- no soul has a color or anything.

19 I mean, I was taught by my teachers. I've lived  
20 in four different countries, and I have friends and family in  
21 almost every continent except for Antarctica, but, I mean,  
22 they're living in societies, I mean, and I just know people  
23 from everywhere. But I like everyone. I respect everybody,  
24 and I do not intend to harm any -- any individual.

25 Whenever -- when I was in Houston, I tried to do

1 the best I could to help the most needy persons of this  
2 society. I've done that wherever I've been. If I had the  
3 opportunity to do so, I do it. But I want you to -- I mean, I  
4 don't -- I don't know why it has never been brought up. I  
5 mean, I did discuss this with my attorney, but it was  
6 considered as a frivolous claim. But this is what it is, I  
7 mean. I never ever intended to harm any, any individual.

8           And I even sacrificed -- I mean, I was -- in the  
9 response that the government has to the -- to our objections,  
10 it's mentioned that I have never -- I didn't -- I was here for  
11 five years, that I didn't complete my degree. But it should be  
12 noted that my investigation started in early 2004. And by then  
13 I was about to transfer my credits to a university in  
14 Minnesota, but I was -- I had to stay, because it was, like,  
15 Mr. Williams, I just couldn't -- I just couldn't leave him like  
16 that. I mean, nobody else was doing anything. Everybody we  
17 knew just went -- when they tried to advise Mr. Williams, he  
18 just would shun them and not -- I saw this and I just  
19 couldn't -- you know, I had to try something else.

20           And if it was -- I believe if it wasn't for me, I  
21 mean, Mr. Williams -- and if Mr. -- if the codefendant or the  
22 undercover officer were real people who, you know, who were,  
23 like, terrorists or -- I mean, Mr. Williams could have been --  
24 could have done something that could have harmed people, but I  
25 wasn't convinced. I wasn't convinced that Mr. Williams can be

1 a leader. He just follows people. I mean, things just trigger  
2 him somehow and his response is not normal.

3 And if, like I said earlier, like, if it is  
4 proven that Mr. Williams had -- has Asperger's and -- or  
5 autism, then, I mean it should be considered that I tried my  
6 best to stop Mr. Williams from doing anything. I tried to  
7 protect him. I tried to be on his side, making sure that, you  
8 know, he's safe and everybody else is safe around him. And  
9 that's all that I would like to add right now.

10 *THE COURT:* All right. Thank you, sir.

11 Mr. Cook, do you wish to make a statement for the  
12 government?

13 *MR. COOK:* Yes, Your Honor. First of all, I would  
14 like to remind the Court and I know the Court is fully aware,  
15 but that Mr. Mirza is not here for the actions of Mr. Williams.  
16 Mr. Mirza is here for the actions that Mr. Mirza took.

17 The government would ask that a sentence of 360  
18 months to life be imposed against the defendant, Mr. Mirza,  
19 based on his actions.

20 The government would also remind the Court that  
21 pursuant to 18 U.S.C. 3584, sentences given at the same time  
22 are presumed to be concurrent. So, we would ask the Court in  
23 its sentence to make specific findings to run them consecutive  
24 to get to a guideline sentence.

25 United States Sentencing Guideline 5G1.2 states

1 that if the sentence imposed on the court carrying the highest  
2 statutory maximum is less than the total punishment, that a  
3 sentence imposed on one or more of the other counts shall run  
4 consecutively to get to a guideline sentence. And that's what  
5 we're asking the Court to do.

6 18 U.S.C. 3584 then goes on to state that you  
7 look to the factors in 18 U.S.C. 3553 to make a determination  
8 as to whether to run those sentences concurrent or consecutive.

9 The government believes in its brief that it's  
10 presented a case for that and would like to talk about that  
11 briefly. The defense raises the issue of Mr. -- of the case up  
12 in Dallas that just received a 24-month sentence. That was a  
13 case of a single event where the defendant --

14 *MR. MCALISTER:* 24 year.

15 *MR. COOK:* -- 24 year -- you're correct, I'm sorry --  
16 24-year sentence. That was a single event where the defendant  
17 in that case thought he was going to blow up a building.

18 This is not single event, as the Court heard  
19 during the trial. This is a two-year series of events in which  
20 the defendant participated not as a minor role, not as a minor  
21 player, but as a manager, an organizer, and leader of this  
22 jamaat or group. He had the intent to harm people despite what  
23 he says today. Essentially --

24 *THE COURT:* What's the basis for your saying that he  
25 was the leader of the group? It started with two other people,

1 didn't it?

2           MR. COOK: That is correct, Your Honor. However, what  
3 we have here essentially is a Pakistani citizen came to the  
4 United States on August 24th of 2001 under an F-1 visa student.  
5 He entered the college -- he did not enter the college he was  
6 admitted to enroll, but instead went to a different university  
7 and at that university entered a two-year program. More than  
8 five years later, he had not completed that two-year program  
9 and was still in school.

10           During that time period he violated the law by  
11 working and paid no taxes and funneled the money through  
12 another individual to avoid being caught working and paying  
13 those taxes. He planned, attended, and invited people to at  
14 least nine shooting events as set out in the brief on nine  
15 different dates, which were designed to train for jihad against  
16 the United States, the United States forces in Afghanistan.

17           On each of those dates he possessed weapons in  
18 violations of the law. He himself invited what they call like  
19 minded individuals to attend the training camps to train for  
20 jihad. Two of those individuals, Rizbe (phonetic) and Kozy  
21 (phonetic) were his own cousins. He purchased ammunition in  
22 support of these trips on at least four different occasions,  
23 one of which was presented to the Court in trial at the George  
24 R. Brown Convention Center where he purchased a thousand rounds  
25 which were used in that training.

1           In his statement he admitted at least four other  
2 purchases of ammunition in support of these camping weekends at  
3 Carter Country, Academy, and one other location. I believe it  
4 was Wal-Mart actually. He admitted to the purchase of a  
5 firearm in support of his ideas of going jihad from an  
6 individual so as to avoid the background check that is  
7 incumbent on purchasing a weapon at a regular location, such as  
8 Carter Country.

9           He planned to act as the guide for getting the  
10 jamaat or group to Pakistan, having the experience in Pakistan,  
11 having lived there before. He would act as their guide once  
12 they were in Pakistan on where they were to go, how they were  
13 to act, who they were to contact, and to act as a translator,  
14 because he spoke the language.

15           He encouraged the donation of funds to the  
16 Mujahideen and the Taliban. He elicited funds for the  
17 Mujahideen and the Taliban. And in some of the tapes that were  
18 played for the Court, stated that he collected money from the  
19 confidential source, the undercover, codefendant Williams, and  
20 add an additional sum of \$300 that he had collected throughout  
21 the community to those funds. He was the conduit for getting  
22 that money to Afghanistan in support of the Taliban. He  
23 collected the money. He deposited the money, withdrew the  
24 funds, and handed it to a Mr. Badat, who then handed the money  
25 to a Mr. Ismail, who were to get the money to Afghanistan and

1 the Taliban.

2           He led these events. He organized the events.  
3 He's the source for getting all the money overseas. That's why  
4 he should be viewed as a manager, organizer, leader, and should  
5 be punished in a manner commensurate with what he did, what his  
6 role was in this group, again, not a single event, a two-year  
7 planned operation to lead individuals against United States  
8 forces.

9           He says that he had no intent to harm  
10 individuals. On July 15th, 2005, on camping event number four,  
11 the defendant is quoted stating, "The Quran defines jihad as  
12 killing or fighting."

13           In another shooting event, the defendant is  
14 quoted as saying, "I think we should be ready to go jihad any  
15 time now."

16           He led this group or was at least one of the  
17 leaders of this group. We have an individual here who came to  
18 this country to take advantage of the opportunities and  
19 freedoms that we offer and repaid it by planning to fight  
20 against our own forces in support of a foreign terrorist  
21 organization. He planned to do that physically, to kill the  
22 forces, and felt that if he couldn't do that at that time would  
23 do so by supporting those who were actively fighting in  
24 Afghanistan at the time.

25           The government requests that the defendant be



1 sentenced with a guideline sentence of 360 months to life.

2 Thank you.

3 *THE COURT:* Okay. Thank you, sir.

4 All right. I'll state now the sentence the Court  
5 intends to impose. I'll give final opportunity for any legal  
6 objections if there are any before it is finally imposed.

7 The Court has considered the advisory guidelines.  
8 The Court has also considered the requirements of Section  
9 3553(a) that sets forth factors to be considered in imposing a  
10 sentence. The Court is required to impose a sentence  
11 sufficient but not greater than necessary to comply with the  
12 purposes set forth in Paragraph 2 of Subsection A, and those  
13 factors include: The need to reflect the seriousness of the  
14 offense, to promote respect for the law, and to provide just  
15 punishment, to afford adequate deterrence to criminal conduct,  
16 to protect the public from further crimes of the defendant,  
17 and, also, among other things, the need to avoid unwarranted  
18 sentence disparities among defendants with similar records who  
19 have been found guilty of similar conduct.

20 The Court has taken into account these several  
21 factors as well as the history and characteristics of the  
22 defendant. It is, indeed, a mixed history, because while on  
23 the one hand we have the offenses that have been committed  
24 here, the defendant does have as well a history of giving  
25 compassionate aid to those in need, those who are hungry, those

1 who have suffered from natural disasters, such as a hurricane  
2 and events of that magnitude. He has -- those factors, those  
3 positive elements have been presented in some of the letters.  
4 Also, some of it was presented during the course of the trial  
5 by witnesses.

6           The Court's also considered the sentences that  
7 have been imposed in other cases, such as -- by which Mr. Adler  
8 and Mr. Cook have referred to in Dallas, but other sentences  
9 imposed with respect to codefendants in this case who did enter  
10 pleas or were found in bench trials to be guilty.

11           MR. COOK: Would the Court like me to address the  
12 disparity in sentencing, Your Honor?

13           THE COURT: I did not. I thought you had made your  
14 presentation already.

15           MR. COOK: I just wonder if you wanted to hear on  
16 that, Your Honor, what the government's thoughts were.

17           THE COURT: I've also considered the circumstances of  
18 this offense -- these offenses, which certainly with respect to  
19 the conspiracy to aid the -- make unlawful contributions to  
20 benefit specially designated global terrorist organization are,  
21 indeed, serious, along with the other conduct that I described  
22 previously. And having weighed all of the factors required to  
23 be considered by Section 3553(a), the Court is of the view that  
24 it's appropriate in this case to achieve those objectives, to  
25 impose a variance sentence, which I shall state as follows,

1 once again, giving an opportunity for any legal objections, if  
2 there are any before it is finally imposed.

3 Pursuant to the Sentencing Reform Act of 1984,  
4 it's the judgment of the Court that the defendant, Adnan Babar  
5 Mirza, is hereby committed to the custody of the Bureau of  
6 Prisons to be imprisoned for a term of 60 months as to each of  
7 Counts 1S and 2S, followed by a consecutive term of 120 months  
8 as to each of Counts 3S through 8S -- no, I should say through  
9 9S, Counts 3 through 9. Now, those counts on 3 through 9 to  
10 run concurrently with each other, but consecutive as to the  
11 sentence on Counts 1 and 2, for a total term of 180 months.

12 Upon release from imprisonment, the defendant  
13 shall be placed on supervised release for a term of three years  
14 as to each of Counts 1S through 9S to run concurrently, for a  
15 total term of three years.

16 Within 72 hours after release from the custody of  
17 the Bureau of Prisons, the defendant shall report in person to  
18 the probation office in the district to which the defendant is  
19 released.

20 While on supervised release, the defendant shall  
21 not commit another federal, state, or local crime; shall comply  
22 with the standard conditions that have been adopted by this  
23 Court under General Order No. H 1996-10, abide by any mandatory  
24 conditions required by law and shall comply with the following  
25 additional conditions: The defendant shall not possess a

1 firearm, ammunition, destructive device, or any other dangerous  
2 weapon.

3           If deported, the defendant is not to reenter the  
4 United States illegally. If the defendant is deported during  
5 the period of probation or the supervised release term,  
6 supervision by the probation office becomes inactive. If the  
7 defendant returns, the defendant shall report to the nearest  
8 U.S. probation office immediately. Supervision by the  
9 probation office reactivates automatically upon the defendant's  
10 reporting.

11           The defendant shall cooperate in the collection  
12 of a DNA sample from the defendant, if the collections of such  
13 a sample is authorized pursuant to Section 3 of the DNA  
14 Analysis Backlog Elimination Act of 2000.

15           It's further ordered that the defendant shall pay  
16 a special assessment to the United States in the amount of \$100  
17 as to each of Counts 1S through 9S for a total of \$900.

18           The Court finds that the defendant does not have  
19 the financial ability to pay a fine within the established  
20 guideline range but has future earnings capabilities during  
21 imprisonment and after release. The Court, therefore, orders  
22 the defendant shall pay to United States a reduced fine of  
23 \$1,000 as to each of Counts 1S through 9S, for a total of  
24 \$9,000.

25           Having assessed the defendant's ability to pay,

1 payment of the total criminal monetary penalties shall be due  
2 as follows: Defendant shall make a lump sum payment of \$900  
3 due immediately. The balance shall be due in payments of the  
4 greater of \$25 per quarter or 50 percent of any wages earned in  
5 prison in accordance with the Bureau of Prison's inmate  
6 financial responsibility. Any balance remaining after release  
7 from imprisonment shall be paid in equally monthly installments  
8 of the greater of \$200 or 10 percent of gross earnings of the  
9 defendant to begin 60 days after date of release to a term of  
10 supervision. Payments to be made through the United States  
11 District Clerk, Southern District of Texas.

12 Is there any legal reason why the sentence should  
13 not be imposed as stated other than those already stated?

14 *MR. COOK:* No, Your Honor, not from the government.

15 *MR. ADLER:* No, Your Honor.

16 *THE COURT:* Then pursuant to the Sentencing Reform Act  
17 of 1984, it's the judgment of the Court that the sentence as  
18 stated is imposed upon Defendant Adnan Babar Mirza.

19 Now, Mr. Mirza, you have a right to appeal this  
20 matter. If you cannot afford a lawyer to represent you on  
21 appeal and can satisfy the Court that you meet the criteria for  
22 the appointment of counsel, I will appoint a lawyer for you.  
23 Mr. Adler will advise you of your appeal rights, I'm sure.  
24 I'll also give to you this written notice of your appeal rights  
25 that you may take with you, and a copy of this will be retained

1 in the court file.

2           Let me say, Mr. Mirza, I have imposed a sentence  
3 more lenient than what is called for by the guidelines and I  
4 hope I do so without any minimization of the -- my views as to  
5 the seriousness of the crimes that you've committed and the  
6 activity in which you were engaged. But, also, I have  
7 considered the fact of what you've said and I hope that it's  
8 true, that you've never wanted, yourself, to hurt anyone. To  
9 assist others in hurting other people is just as bad. I hope  
10 that you will not do that again. And I hope that you will when  
11 you're released and wherever you may be, that you will live a  
12 law abiding and peaceful life, giving expression to those good  
13 traits that have been spoken of you and helping others through  
14 charitable acts and not preparing to hurt or harm others  
15 through violent acts, and I hope that's where you'll choose to  
16 take your future.

17           *THE DEFENDANT:* Your Honor, that has always been my  
18 concern. And like I mentioned before, I have never, never  
19 intended to harm anybody. And what we know today about -- I  
20 mean, what we hear today about jihad and stuff, I know that  
21 this was created back in the '80s and the '90s to just have a  
22 proxy army to fight the Russians by the Pakistani intelligence  
23 or the Saudi intelligence. This is not Islam. Islam does not  
24 teach that, and I believe that. But I also know that I cannot  
25 counter the type of dollars that the Saudi government has --

1 you know, use to promote their ideology, which is harming  
2 practicing Muslims. And I'm concerned about that, because I do  
3 not want to change my faith, but at the same time I know the  
4 circumstances there. It very hard to, you know, counter  
5 somebody who's sitting on probably 25 percent of the world's  
6 oil resources. It's just hard.

7 *THE COURT:* All right. Anything else?

8 *MR. ADLER:* Briefly, Judge. I will file the notice of  
9 appeal. As the Court knows, I'm Court appointed for Mr. Mirza.  
10 I will file the notice of appeal, if he instructs me to do so,  
11 but I believe he would -- he's going to request a different  
12 lawyer for the appeal. So, I will file that paperwork  
13 requesting a different lawyer be appointed for his appeal.

14 *THE COURT:* All right. Thank you.

15 *MR. ADLER:* That's all I have, Your Honor.

16 *THE COURT:* All right. Thank you. Is that all?

17 *MR. COOK:* That's all, Your Honor.

18 *THE COURT:* All right. That concludes this hearing.

19 *(Concluded at 11:23 a.m.)*

20 \* \* \*

21 I certify that the foregoing is a correct transcript from the  
22 record of proceedings in the above-entitled cause, to the best  
23 of my ability.

24 /s/ Kathy L. Metzger  
Kathy L. Metzger  
25 Official Court Reporter

8-27-12  
Date